



Brexit: Further Recent Developments Debate on 25 March 2019

Summary

A debate on “exiting the EU” is scheduled to take place in the Lords on 25 March, although the exact wording of the motion has not been published. Under section 13 of the European Union (Withdrawal) Act 2018 (the EUWA), the Government must hold a take-note debate in the Lords by 26 March on its proposed next steps following its defeat in the second ‘meaningful vote’ in the Commons on 12 March. A debate must also take place in the Commons by 25 March; this will be on an amendable motion.

Having rejected the Government’s deal for a second time, the Commons voted on 13 March to reject leaving the EU with no deal, and on 14 March to agree that the Government should seek to agree with the EU an extension of the article 50 period. It was widely speculated that the Government would hold a third ‘meaningful vote’ by 20 March, but on 18 March the Commons Speaker indicated that “a demonstrable change to the proposition would be required” for this not to fall foul of the convention that the Commons should not consider motions that are the same or substantially the same as a question which has already been decided in the current session.

On 20 March, Theresa May wrote to Donald Tusk, President of the European Council, explaining this had made it “impossible in practice” to hold a third ‘meaningful vote’ before the European Council on 21 March, but it remained her intention to bring the deal back to the Commons “as soon as possible”. She informed the European Council that the UK was seeking an extension to the article 50 period until 30 June 2019. The leaders of the EU27 member states will consider this request at a meeting on 21 March. An extension can only be granted if they agree unanimously. President Tusk indicated on 20 March that they would agree only if the Government had won a ‘meaningful vote’ in the Commons. The EU27 may not take a final decision until next week, either by written procedure or in an additional European Council meeting. The default legal position remains that unless a withdrawal agreement is ratified by 29 March 2019, or an extension to article 50 is agreed, or the UK revokes its article 50 notification, then the UK will leave the EU without a deal on 29 March 2019.

In preparation for the Lords debate, and in light of these recent developments, this briefing (which was published before the European Council on 21 March) covers:

- Section 13 of the EUWA—the steps that must be fulfilled as a domestic legal requirement in order for the UK to ratify a withdrawal agreement; the steps the Government must take after losing a ‘meaningful vote’; and the role of the House of Lords.
- The Speaker’s statement of 18 March and the impact of this on the prospects for the holding of a third ‘meaningful vote’.
- The UK’s request for an extension of article 50; the legal processes that apply to this under EU and domestic law, including the role of the House of Lords; and the implications of the timing of the European Parliament elections scheduled for 23–26 May on the possible duration of any extension.

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I. Introduction

A series of key Brexit votes took place in the House of Commons last week. On 12 March 2019, the Government lost, by a majority of 149, a second ‘meaningful vote’ on the deal it had agreed with the EU for the UK’s withdrawal from the European Union.¹ This defeat followed the Prime Minister’s agreement with Jean-Claude Juncker, President of the European Commission, on 11 March of the ‘Strasbourg package’ of interpretations and clarifications intended to provide further assurance that the Northern Ireland backstop would not become a permanent arrangement.² The margin of defeat was smaller than in the first ‘meaningful vote’ on 15 January, which the Government lost by 230 votes.³

The Prime Minister had previously promised that if the Government did not win a ‘meaningful vote’ by 12 March, the Commons would have the opportunity to vote by 13 March on whether to leave the EU with no deal on 29 March 2019, and if it rejected this course of action, to vote on 14 March on whether to request an extension to the article 50 period.⁴ On 13 March, the Commons voted by a majority of 43 to reject leaving the EU with no deal.⁵ On 14 March, the Commons agreed by a majority of 211 that the Government should seek to agree with the EU an extension of the article 50 period.⁶

Under the terms of article 50, if a withdrawal agreement between the UK and the EU is not ratified, the default legal position is that UK will leave the EU on 29 March 2019 without a deal, unless an extension to the two-year article 50 period is agreed unanimously with all 27 EU member states, or unless the UK revokes its article 50 notification and remains an EU member.

One part of the motion agreed by the Commons on 14 March specified that if the Commons had approved the deal by 20 March, then the Government would seek a one-off extension of article 50 until 30 June. The date of 20 March is significant because EU27 leaders, who would have to decide whether or not to agree to an extension, are due to meet at a European Council summit on 21–22 March, their last scheduled meeting before the article 50 deadline of 29 March 2019. It was widely speculated that the Government would hold a third ‘meaningful vote’ on 19 or 20 March. However, on 18 March, the Speaker of the House of Commons stated that he would consider any future motions for a ‘meaningful vote’ in light of a

¹ [HC Hansard, 12 March 2019, cols 208–300.](#)

² For further information, see: House of Commons Library, [The Strasbourg Package](#), 13 March 2019.

³ [HC Hansard, 15 January 2019, cols 1122–5.](#)

⁴ [HC Hansard, 26 February 2019, col 166.](#)

⁵ [HC Hansard, 13 March 2019, cols 460–63.](#) A vote on an amendment to the Government motion was won by a majority of four votes; the final vote on the motion as amended was won by a majority of 43—for further details see the table in the appendix to this briefing.

⁶ [HC Hansard, 13 March 2019, cols 647–51.](#)

longstanding convention that the Commons should not consider motions that were the same, or substantially the same, as a question which had already been decided on during the current parliamentary session.⁷ He indicated that “a demonstrable change to the proposition would be required” for him to rule that a third ‘meaningful vote’ was in order.⁸

On 20 March, Theresa May wrote a letter to Donald Tusk, President of the European Council, explaining that the Speaker’s statement had made it “impossible in practice” to hold a third ‘meaningful vote’ before the European Council on 21 March, but that it remained her intention to bring the deal back to the Commons “as soon as possible” after the European Council.⁹ She informed the European Council that the UK was seeking an extension to the article 50 period until 30 June 2019, to allow more time for the UK to ratify the deal.

The European Council will consider this request at its meeting on 21 March. An extension can only be granted if the leaders of all 27 EU member states agree unanimously. In a statement responding to Mrs May’s letter, President Tusk suggested on 20 March that EU27 leaders would agree to an extension only if the Government had won a ‘meaningful vote’ in the Commons, and that they would have to discuss legal and political questions raised by the Government’s proposed date of 30 June.¹⁰ President Tusk did not address explicitly in his statement what the European Council would do if the Government failed to win a ‘meaningful vote’ in the Commons. The default legal position remains that unless a withdrawal agreement is ratified by 29 March 2019, or an extension to article 50 is agreed, or the UK revokes its article 50 notification, then the UK will leave the EU without a deal on 29 March 2019.

Under section 13 of the European Union (Withdrawal) Act (the EUWA), if the Government loses a ‘meaningful vote’, it is obliged within 21 days to make a statement about how it proposes to proceed, and to table a debate in both Houses within seven sitting days of making the statement. Following its defeat in the ‘meaningful vote’ of 12 March, the Government made the required written statement on 15 March, meaning it must be debated by 25 March in the Commons and 26 March in the Lords (the dates differ because of the different sitting patterns of the two Houses).

A debate on “exiting the EU” is scheduled to take place in the Lords on 25 March, although at the time of writing of this briefing, the exact wording of the debate motion has not been published.¹¹ In preparation for that

⁷ [HC Hansard, 18 March 2019, col 775.](#)

⁸ *ibid*, col 781.

⁹ Prime Minister, ‘[Letter to Donald Tusk, President of the European Council](#)’, 20 March 2019.

¹⁰ European Council, ‘[Statement by President Donald Tusk on Brexit](#)’, 20 March 2019.

¹¹ Government Whips’ Office, House of Lords, [Forthcoming Business](#), 20 March 2019, p 3.

debate, and in light of the recent developments set out above, this briefing covers the following:

- Section 13 of the EUWA—the steps that must be fulfilled as a domestic legal requirement in order for the UK to ratify a withdrawal agreement; the steps the Government must take after losing a ‘meaningful vote’; and the role of the House of Lords.
- The Speaker’s statement of 18 March and the impact of this on the prospects for the holding of a third ‘meaningful vote’.
- The UK’s request for an extension of article 50; the legal processes that apply to this under EU and domestic law, including the role of the House of Lords; and the implications of the timing of the European Parliament elections scheduled for 23–26 May on the possible duration of any extension.

An appendix at the end of the briefing summarises debates held in both Houses on the withdrawal agreement and political declaration since December 2018, some of which have been a statutory requirement under section 13 of the EUWA and some of which have been held following commitments made by the Government. It also lists briefings the Lords Library has produced for previous debates in the Lords.

This briefing was published before the European Council summit on 21 and 22 March 2019.

2. Section 13 of the European Union (Withdrawal) Act 2018

Section 13(1) of the European Union (Withdrawal) Act 2018 (the EUWA) sets out specific requirements for the ratification of a withdrawal agreement that has been agreed between the UK and the EU under article 50(2) of the Treaty on European Union.

This requires that before a withdrawal agreement can be ratified four conditions must be met (those requirements placed upon the House of Lords are defined in section 13(1)(c)):

13 Parliamentary approval of the outcome of negotiations with the EU

(1) The withdrawal agreement may be ratified only if—

(a) a Minister of the Crown has laid before each House of Parliament—

(i) a statement that political agreement has been reached,

(ii) a copy of the negotiated withdrawal agreement, and

- (iii) a copy of the framework for the future relationship,
- (b) the negotiated withdrawal agreement and the framework for the future relationship have been approved by a resolution of the House of Commons on a motion moved by a Minister of the Crown,
- (c) a motion for the House of Lords to take note of the negotiated withdrawal agreement and the framework for the future relationship has been tabled in the House of Lords by a Minister of the Crown and—
 - (i) the House of Lords has debated the motion, or
 - (ii) the House of Lords has not concluded a debate on the motion before the end of the period of five Lords sitting days beginning with the first Lords sitting day after the day on which the House of Commons passes the resolution mentioned in paragraph (b), and
- (d) an Act of Parliament has been passed which contains provision for the implementation of the withdrawal agreement.

Ratification of the withdrawal agreement can only proceed if the House of Commons approves the withdrawal agreement and the framework for the future relationship (often referred to as the ‘meaningful vote’). However, approval by the House of Lords is not required under section 13(1)(c) in order for ratification of the withdrawal agreement to proceed. Motions under section 13(1)(b) have been debated twice in the House of Commons—in the first ‘meaningful vote’ held in the House of Commons on 15 January 2019 (following a postponement from December) and in the second ‘meaningful vote’ held on 12 March 2019.¹² In relation to the second vote, and for the purposes of section 13(1)(a), the Prime Minister made a written statement on 11 March 2019 stating that political agreement had been reached.¹³

Should the House of Commons resolve not to support a motion under section 13(1)(b) (ie, if the Government loses a ‘meaningful vote’), then under section 13(4) the Government has to make a statement on how it proposes to proceed:

A Minister of the Crown must, within the period of 21 days beginning with the day on which the House of Commons decides not to pass the resolution, make a statement setting out how Her Majesty’s

¹² Summaries of the debates that have taken place under section 13 of the European Union (Withdrawal) Act 2018 can be found in the appendix to this briefing.

¹³ House of Commons, [‘Written Statement: Exiting the European Union’](#), 11 March 2019, HCWS1398.

Government proposes to proceed in relation to negotiations for the United Kingdom's withdrawal from the EU under Article 50(2) of the Treaty on European Union.¹⁴

Section 13(6) provides that a Minister of the Crown must make arrangements for motions to be considered in each House on the statement made under section 13(4) within a period of seven sitting days:

- (6) A Minister of the Crown must make arrangements for—
- (a) a motion in neutral terms, to the effect that the House of Commons has considered the matter of the statement mentioned in subsection (4), to be moved in that House by a Minister of the Crown within the period of seven Commons sitting days beginning with the day on which the statement is made, and
 - (b) a motion for the House of Lords to take note of the statement to be moved in that House by a Minister of the Crown within the period of seven Lords sitting days beginning with the day on which the statement is made.¹⁵

After the Government lost the second 'meaningful vote', Stephen Barclay, Secretary of State for Exiting the European Union, indicated on 14 March 2019 that the House of Commons would have the opportunity to debate a motion under section 13(6) by 25 March 2019:

We will make our statement under section 13(4) of the withdrawal Act tomorrow [15 March 2019], setting out how the Government propose to proceed in relation to negotiations. There will be the option of an amendable motion no later than Monday 25 March.¹⁶

In the House of Lords, seven sitting days from 15 March 2019 (the date the Government made the written statement under section 13(4)) is 26 March, so a debate must be held by this date. A debate on "exiting the EU" is scheduled for 25 March, although the exact motion for debate has not been published at the time of writing of this briefing.¹⁷

2.1 Section 13(4) Statement, 15 March 2019

Following the rejection of the second 'meaningful vote' by the House of Commons on 12 March 2019, the Prime Minister made a written statement

¹⁴ European Union (Withdrawal) Act 2018, section 13(4).

¹⁵ *ibid*, section 13(6).

¹⁶ [HC Hansard, 14 March 2019, col 627](#).

¹⁷ Government Whips' Office, House of Lords, [Forthcoming Business](#), 20 March 2019, p 3.

on 15 March 2019 for the purposes of section 13(4) of the EUWA.¹⁸

The Prime Minister said that the Government regretted the decision of the Commons not to approve the withdrawal agreement and stated that it continued to believe that the best way for the UK to leave the EU would be through approving the agreement. The statement noted the motions passed by the House of Commons on 13 and 14 March 2019 resolving not to leave the EU without a deal and to seek an extension to the article 50 process. The statement said that the Government would act in accordance with the motion of 14 March and seek to agree an extension with the EU.

In the statement the Prime Minister referenced the motion agreed by the Commons on 14 March. This stated that were the Commons to have agreed a withdrawal agreement by 20 March 2019, the Government would seek a “one-off” extension of article 50 to 30 June 2019.¹⁹ Were this not to have happened by this date, the motion noted that it was “highly likely” that the European Council would require a clear purpose for any extension and it would need to know its requested length. The motion also argued that an extension beyond 30 June 2019 “would require the United Kingdom to hold European Parliament elections in May 2019”.²⁰ The full motion consisted of three parts and is available in full in the table in the appendix of this briefing. The considerations involved in extending article 50, including issues raised by the timing of the European Parliament elections, are discussed further in section 4.2 of this briefing. The statement said that the Government expected the EU to use the European Council meeting on 21 and 22 March 2019 to consider a request from the UK to extend article 50.²¹

The Government said that once it had reached agreement with the EU on extension, it would introduce a statutory instrument “as soon as possible” under section 20(4) of the EUWA in order to amend the definition of exit day in section 20 of the Act from 29 March 2019 to that agreed with the EU. The statutory instrument would be subject to the draft affirmative procedure and so would have to be approved by the House of Commons and the House of Lords. The Lords retains its powers to approve or decline to approve such instruments. The process for this is discussed further in section 4.1 of this briefing. The statement explained that because the instrument would be giving effect to an agreement reached between the UK and the EU, it could not be laid until such an agreement had been reached.

¹⁸ House of Commons, ‘[Written Statement: Statement under Section 13\(4\) of the European Union \(Withdrawal\) Act 2018](#)’, 15 March 2019, HCWS1421.

¹⁹ [HC Hansard, 14 March 2019, col 651](#).

²⁰ *ibid.*

²¹ House of Commons, ‘[Written Statement: Statement under Section 13\(4\) of the European Union \(Withdrawal\) Act 2018](#)’, 15 March 2019, HCWS1421.

2.2 Section 13: Role of the House of Lords

Section 13(1) of the EUWA does not give the House of Lords a ‘meaningful vote’ in the same sense as the House of Commons. Section 13(1)(b) requires the House of Commons to formally approve the withdrawal agreement and political declaration before ratification of a withdrawal agreement could proceed, whereas section 13(1)(c) requires a ‘take note’ motion on the withdrawal agreement and political declaration to be tabled in the Lords.²² A section 13(1)(c) debate in relation to the second ‘meaningful vote’ has not been held in the House of Lords. This does not affect the engagement of section 13(1) in relation to any future ‘meaningful votes’ in the House of Commons. Were the Government to win a third ‘meaningful vote’ it would have to satisfy the provisions of section 13(1)(c) to table a debate in the Lords and pass primary legislation (a withdrawal agreement bill) in accordance with section 13(1)(d) before the withdrawal agreement could be ratified. Under section 13(6)(b) of the EUWA the Government must make arrangements for a take note debate on the statement made under section 13(4) to take place in the House of Lords.

2.3 Constitutional Reform and Governance Act 2010: Ratification of Treaties

The ratification of treaties is governed by the part 2 of the Constitutional Reform and Governance Act 2010 (CRAG). Section 13(14) of the EUWA provides that section 13 does not affect the operation of part 2 of CRAG in relation to the withdrawal agreement.

Section 20(1) of CRAG sets out that a treaty is not to be ratified unless a minister has laid a copy before Parliament; that the treaty has been published in a way that the minister thinks appropriate; and that a period of 21 sittings days has elapsed since the day after the treaty was laid before Parliament, without either House resolving that it should not be ratified. Should the Commons resolve against ratification, the minister may lay a statement indicating that the minister is of the opinion that the treaty should nevertheless be ratified and explaining why. A second period of 21 sitting days is then triggered, during which the Commons may resolve again against ratification. Similarly, the minister may then lay another statement. In such a way the Commons theoretically has the power to delay ratification indefinitely. The House of Lords does not have this power. Should the Lords resolve against ratification and the Commons not resolve against ratification, then the treaty may be ratified “if a Minister of the Crown has laid before Parliament a statement indicating that the minister is of the opinion that the

²² However, section 13(1)(d) does require an Act of Parliament implementing a withdrawal agreement in domestic law to be passed before ratification could proceed. Acts of Parliament require the approval of both Houses to pass, unless section 2 of the Parliament Act 1911 was to be invoked.

treaty should nevertheless be ratified and explaining why”.²³ Section 20 can be disapplied using provisions of section 22 “if a Minister of the Crown is of the opinion that, exceptionally, the treaty should be ratified without the requirements of that section having been met”.²⁴ Section 22(3) requires the Minister to explain in a statement why they are of that opinion. However, the Commons Library has observed that:

Although the [CRA] puts on a statutory footing Parliament’s opportunity to scrutinise treaties, and gives the Commons the power to block ratification of treaties, the Act does not require either House to debate or vote on them.²⁵

Theresa May had previously suggested that if time was running short to lay the withdrawal agreement for at least 21 sitting days before exit day, the Government could use the withdrawal agreement bill (the legislation planned to implement the withdrawal agreement in domestic law) to modify the normal ratification requirements under CRA:

[...] the European Union (Withdrawal) Act 2018 makes clear that the provisions of the 2010 Act apply to the withdrawal agreement and require it to be laid before Parliament for 21 sitting days. In most circumstances, that period may be important for the House to have an opportunity to study a piece of legislation, but in this instance, MPs will already have debated and approved the agreement as part of the meaningful vote. While we will follow normal procedure if we can, where there is insufficient time remaining following a successful meaningful vote, we will make provision in the withdrawal agreement bill, with Parliament’s consent to ensure that we are able to ratify on time to guarantee our exit in an orderly way.²⁶

Lord Callanan, Minister of State for Exiting the European Union, observed that such a change would require the agreement of the Lords, although like the Prime Minister, he suggested that scrutiny under CRA might not be so important since the withdrawal agreement would also be scrutinised under other procedures:

This would of course require agreement in both Houses; noble Lords will no doubt want to consider the arguments carefully. What is important is that Parliament has the opportunity for ample time to scrutinise, debate and vote on the withdrawal agreement. In the circumstance where the House of Commons had voted to pass that agreement, though, it is hard to see why Parliament would want to

²³ Constitutional Reform and Governance Act 2010, section 20(8).

²⁴ *ibid*, section 22(1).

²⁵ House of Commons Library, [Parliament’s Role in Ratifying Treaties](#), 17 February 2017, p 18.

²⁶ [HC Hansard, 12 February 2019, cols 744–5.](#)

hold up our exit or to allow MPs or Peers to consider the treaty once more.²⁷

3. Prospect of a Third ‘Meaningful Vote’

3.1 Speaker’s Statement, 18 March 2019

The second paragraph of the three-part motion agreed by the House of Commons on 14 March 2019 included wording about seeking an article 50 extension in the specific circumstance where the House had considered a third ‘meaningful’ vote by 20 March 2019:

[I]f the House has passed a resolution approving the negotiated withdrawal agreement and the framework for the future relationship for the purposes of section 13(1)(b) of the European Union (Withdrawal) Act 2018 by 20 March 2019, then the Government will seek to agree with the European Union a one-off extension of the period specified in Article 50(3) for a period ending on 30 June 2019 [...]²⁸

On 18 March 2019, the Speaker of the House of Commons made a statement to the House, in which he referred to “much speculation” about the possibility of the Government bringing forward a third ‘meaningful vote’ under section 13(1)(b) of the EUWA.²⁹

His statement followed a point of order made by Angela Eagle (Labour MP for Wallasey) on 13 March 2019. Ms Eagle had asked the Speaker whether it would be in order for the Government to bring back the same deal to the House of Commons “possibly ad infinitum”.³⁰ The Speaker said that following Angela Eagle’s point of order he had received representations “on both sides of the House and indeed on both sides of the Brexit argument” about the House of Commons pronouncing on “the same fundamental proposition”.

²⁷ [HL Hansard, 13 February 2019, col 1935.](#)

²⁸ [HC Hansard, 14 March 2019, col 651.](#)

²⁹ [HC Hansard, 18 March 2019, col 775.](#)

³⁰ [HC Hansard, 13 March 2019, cols 394–5.](#) Chris Bryant (Labour MP for Rhondda) had tabled an amendment to the Government’s motion on 14 March 2019, which referred to the convention in *Erskine May* and would have “[ordered] the Government not to move a further motion asking the House to approve the withdrawal agreement and framework for the future partnership that the House declined to approve on 15 January 2019 and 12 March 2019” (House of Commons, [Amendments Tabled to the Motion on the UK’s Withdrawal from the European Union](#), 14 March 2019, amendment j). Mr Bryant did not move his amendment to division ([HC Hansard, 14 March 2019, col 646](#)).

The Speaker quoted a rule contained in *Erskine May* which states that:

A motion or an amendment which is the same, in substance, as a question which has been decided during a session may not be brought forward again during that same session [...]

Attempts have been made to evade this rule by raising again, with verbal alterations, the essential portions of motions which have been negatived. Whether the second motion is substantially the same as the first is finally a matter for the judgment of the Chair.³¹

The Speaker stated the “convention is very strong and of long standing, dating back to 2 April 1604”, stating that *Erskine May* made reference to “no fewer” than twelve such rulings up until 1920. He argued that an absence of rulings by the Speaker since that time was a result of the convention generally being complied with. He explained that he did not view the second ‘meaningful vote’ as falling within the convention because he said it could be argued that it was a different proposition to the first vote:

[I]t could be credibly argued that it was a different proposition from that already rejected by the House on 15 January. It contained a number of legal changes which the Government considered to be binding and which had been agreed with the European Union after intensive discussions. Moreover, the Government’s second meaningful vote motion was accompanied by the publication of three new documents—two issued jointly with the EU and a unilateral declaration from the UK not objected to by the EU. In procedural terms, it was therefore quite proper that the debate and the second vote took place last week.³²

The Speaker said that he was making the statement to signal “what would be orderly and what would be not” in light of suggestions that further ‘meaningful votes’ could be tabled. He concluded that a future motion would be in order if it was not the same or substantially the same as the second ‘meaningful vote’ and that the Government could not legitimately table the same proposition or substantially the same proposition:

[I]f the Government wish to bring forward a new proposition that is neither the same nor substantially the same as that disposed of by the House on 12 March, that would be entirely in order. What the Government cannot legitimately do is to resubmit to the House the

³¹ Malcolm Jack (Ed), *Erskine May’s Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 2011 24th edition, p 397

³² [HC Hansard, 18 March 2019, col 776](#).

same proposition or substantially the same proposition as that of last week.³³

The Speaker said that he was not “closing the door” and that he had specifically stated this would not be his last word on the matter.³⁴ He said his statement was “simply meant to indicate the test that the Government must meet for me to rule that a third meaningful vote can legitimately be held during the current parliamentary session”.³⁵

Jacob Rees-Mogg (Conservative MP for North East Somerset) asked whether proroguing the House and starting a new session would allow the same motion to return to the House. The Speaker said that he was “not advocating that, but that point is self-evidently valid”.³⁶

A number of MPs raised points of order asking about specific examples of issues that had been the subject of previous motions. For example, Vicky Ford (Conservative MP for Chelmsford) asked:

Since the vote last Tuesday, this House has voted against a second referendum, against the Cooper-Boles amendment—twice—and against a no-deal Brexit in 11 days’ time. Are those the sort of decisions that, in your view, affect the context and circumstances on which this House might make its own decision?³⁷

The Speaker responded that it would depend upon the context of the motion:

I think the context is a freestanding matter. It depends on the situation at the time, and that is partly a matter of opinion. All government—all influence of human beings upon another—ultimately rests upon opinion, and it depends on what the situation is more widely.³⁸

He also stated that he would not pronounce on questions that were not before the House that day. However, he would reflect on any questions “in the circumstances of the time, and it is perfectly reasonable that [he] should be asked to do so if that situation arises”.³⁹

Kate Hoey (Labour MP for Vauxhall) asked why the motions of 13 and 14 March 2019 did not fall within the convention when, she argued, two

³³ [HC Hansard, 18 March 2019, col 776.](#)

³⁴ *ibid*, col 792.

³⁵ *ibid*.

³⁶ *ibid*, col 778.

³⁷ *ibid*, col 781.

³⁸ *ibid*.

³⁹ *ibid*.

previous motions had been considered that were also on the subject of extending article 50 and ruling out no deal. The Speaker said that he would need to look at the motions again but that the issue had not been raised with him at the time and he had not been asked to rule on them:

I did not receive advice at that time about non-compliance. I do not think that there was a general sense in the House that there was an issue of non-compliance, and I was not asked to rule on it. Matters are already treated of by the Table Office on the basis of established custom and practice. If those matters were accepted on to the paper, the issue of selection would have been for me, in the interests of facilitating the debate. However, the issue of propriety was not raised with me at that time.⁴⁰

Hilary Benn (Labour MP for Leeds Central) asked whether there would have to be new political agreement under section 13(1) of the European Union (Withdrawal) Act 2018 in order for a motion to be in order. The Speaker responded saying that “preliminarily and off the top of my head—that, in all likelihood, the answer to the question is yes”. He expanded that a simple change to wording would not be sufficient and that a demonstrable change to the proposition would be required:

I do think that a demonstrable change to the proposition would be required. For example, simply a change in an opinion about something would not itself constitute a change in the offer. I would have to look at the particulars and make an honest assessment of the circumstances, and perhaps of the competing claims made as to the veracity of one proposition, argument or another, but, fundamentally, for something to be different, it has to be, by definition, fundamentally different—not different in terms of wording, but different in terms of substance—and this is in the context of a negotiation with others outside the United Kingdom. That would be my initial feeling.⁴¹

John Whittingdale (Conservative MP for Maldon) asked if a “significant change” could be achieved at the European Council on 21 March 2019, and then a new motion tabled on that basis. The Speaker reiterated his previous comments:

[I]f there is a substantially different proposition put as a result of revisions sought and obtained and new agreement reached, that would constitute a new proposition to be put to the House. I would have to look at the particulars and I am not committing to a specific at this moment.⁴²

⁴⁰ [HC Hansard, 18 March 2019, col 787.](#)

⁴¹ *ibid*, col 781.

⁴² *ibid*, col 789.

Pete Wishart (Scottish National Party (SNP) MP for Perth and North Perthshire) asked the Speaker what criteria would be used to assess a motion under the convention.⁴³ The Speaker said he would confer and would seek to respect the wishes of the House, but reiterated his view that the convention was there for a purpose:

It seems to me that it is principally a question of whether the proposition is the same, or substantially the same. I would confer. I would of course seek advice. I would have my eyes and ears open. I am looking to serve the House, to reflect its interests and to demonstrate respect for its wishes. I simply repeat that the convention is there for a purpose, and that purpose seems to me to be an honourable and valid purpose. I am afraid that I will have to look at the particulars in the light of what is presented, but I hope that the Government would feel that respect for procedure matters.⁴⁴

Alex Burghart (Conservative MP for Brentwood and Ongar) asked whether the Commons could choose to suspend its standing orders. The Speaker said that the Clerk of the House of Commons had confirmed his understanding that:

[T]he House is the custodian of its own Standing Orders. The Standing Orders are a matter for the House, and they can be changed. That has happened before, and it could conceivably happen again. So the answer to the central inquiry is yes.⁴⁵

Erskine May does not state any specific standing order as being the source of the rule. However, it states that:

On rare occasions where the House has been offered a series of alternative proposals for its consideration, an order was made specifically directing the Chair to put the questions on later motions notwithstanding any decision of the House on earlier motions.⁴⁶

On 31 October 2018, Sir David Natzler, then Clerk of the House of Commons, gave evidence to the Commons Exiting the European Union Committee. He stated that “if it plainly was the will of the House” there were ways in which the House could consider a motion that it had decided

⁴³ [HC Hansard, 18 March 2019, col 784.](#)

⁴⁴ *ibid.*

⁴⁵ *ibid.*, col 791.

⁴⁶ Malcolm Jack (Ed), *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 2011 24th edition, p 397. *Erskine May* cites the successive options for reform of the House of Lords in 2002–03 (House of Commons, [Journals of the House of Commons: 13 November 2002 to 20 November 2003](#), 4 February 2003, vol 259, pp 165–6; and [HC Hansard, 6 March 2007, col 1389.](#)

on previously in the same session.⁴⁷ Asked by the chair whether a business of the House motion could be used, Sir David replied that “I think it could be done, notwithstanding the practice of the House against reconsideration of a motion in the same session”.⁴⁸

3.2 Prime Minister’s Letter to President of the European Council, 20 March 2019

On 20 March 2019, the Prime Minister, Theresa May, wrote to the President of the European Council, Donald Tusk, requesting an extension of the article 50 period until 30 June 2019.⁴⁹

In her letter, Mrs May referred to the Speaker’s statement of 18 March, quoting his comments that for something to be considered different it had to be “fundamentally different—not different in terms of wording but different in terms of substance”. The Prime Minister said that some MPs had interpreted this to mean that a further change to the deal was required. She argued that this had made it impossible in practice for her to hold another vote on the withdrawal agreement before the European Council on 21 March. She stated that it remained her intention to seek a third vote on the withdrawal agreement in the House of Commons.

The Prime Minister asked the European Council if it could approve the supplementary documents that had been agreed by herself and the President of the European Commission, Jean-Claude Juncker, in Strasbourg.⁵⁰ She argued that this would put “the Government in a position to bring these agreements to the House and [confirm] the changes to the Government’s proposition to Parliament”. The Prime Minister also stated that she intended to bring forward “further domestic proposals that confirm my previous commitments to protect our internal market, given the concerns expressed about the backstop” and that:

On this basis, and in light of the outcome of the European Council, I intend to put forward a motion as soon as possible under section 13 of the Withdrawal Act 2018 [...]⁵¹

The Prime Minister’s letter is also covered in section 4.3 of this briefing as it related to the extension of article 50.

⁴⁷ House of Commons Exiting the European Union Committee, [Oral Evidence: The Progress of the UK’s Negotiations on EU Withdrawal, HC 372](#), 31 October 2018, Q3089.

⁴⁸ *ibid*, Q3090.

⁴⁹ Prime Minister, ‘[Letter to Donald Tusk, President of the European Council](#)’, 20 March 2019.

⁵⁰ For further information see: House of Commons Library, [The ‘Strasbourg Package’](#), 13 March 2019.

⁵¹ *ibid*.

Northern Ireland Proposals, January 2019

The Prime Minister’s reference in her letter to proposals to protect the UK’s internal market in the context of the backstop related to a document published by the Government on 9 January 2019, entitled [UK Government Commitments to Northern Ireland and its Integral Place in the United Kingdom](#). In this, the Government stated that it was committed to “upholding Northern Ireland’s integral place in the United Kingdom and its internal market”.⁵² The Government said that the document was intended to outline “a package of measures to give Northern Ireland a strong voice and role in the backstop process”, including a so-called “Stormont Lock” to give Northern Ireland the power to reject new EU laws and regulations in the backstop (following a restoration of the Northern Ireland Executive and Assembly).⁵³

The Protocol on Ireland/Northern Ireland provides that, if arrangements were not in place by the end of 2020 (the future relationship or ‘alternative arrangements’) to ensure an open border can be maintained, there can be a one-off extension of the transition period, or the backstop arrangements would come into effect. The Government stated that in this scenario, Parliament would decide whether to extend the transition period or to enter the backstop. The document explained that as the impact is “especially significant for Northern Ireland”, the Government would legislate to allow for a restored Northern Ireland Assembly to express its view before Parliament made a decision:

We will therefore provide in law for a mandatory process of consultation with the Northern Ireland Assembly in that scenario.

Thus before any decision is taken on whether to seek to extend the implementation [transition] period, the Assembly would be given an opportunity, ahead of any parliamentary scrutiny, to express its views by debating and voting on the question. How this is done would primarily be a matter for the Assembly and its internal procedures [...]. The Assembly would also alternatively be able to vote in favour of the Government reopening Joint Committee discussions with the European Union or—alternatively—bringing forward and accelerating negotiations on specific aspects of the future relationship relating solely to the border and the trade in goods.

Those views would then be brought before Parliament prior to a vote at Westminster.⁵⁴

⁵² Department for Exiting the European Union, [UK Government Commitments to Northern Ireland and its Integral Place in the United Kingdom](#), 9 January 2019, p 2.

⁵³ Department for Exiting the European Union, ‘[UK Government Commitments to Northern Ireland and its Integral Place in the United Kingdom](#)’, 9 January 2019.

⁵⁴ Department for Exiting the European Union, [UK Government Commitments to Northern Ireland and its Integral Place in the United Kingdom](#), 9 January 2019, pp 6–7.

The document also set out a role for the Northern Ireland Assembly if the backstop did enter into force. The Protocol on Ireland/Northern Ireland provides that under the backstop, Northern Ireland would have to comply with those single market rules necessary to avoid a hard border (the Government says this is only “a small fraction of EU single market rules”).⁵⁵ The Protocol provides that where any of these laws are updated or replaced, the updated version would automatically apply in Northern Ireland. However, if there is a proposal for a new EU law within the scope of the backstop, this could not apply in Northern Ireland without the UK’s consent. The document stated that the Government would “legislate in domestic law to ensure that a UK minister will be required to seek agreement of the Northern Ireland Assembly before reaching any agreement in the UK-EU Joint Committee to add additional alignment provisions to the scope of the Protocol”.⁵⁶

The document also outlined how the Government would intend to maintain the integrity of the UK’s own internal market. It makes a commitment to enshrine in primary legislation that Northern Ireland businesses would “retain full access to the whole UK internal market, even in a backstop scenario”.⁵⁷ It would also ensure (though this is not set out as a commitment to legislate) that there would be no divergence in the rules applied in Great Britain and Northern Ireland in areas covered by the Protocol; were the backstop came into force, the Protocol would oblige certain EU single market rules to apply in Northern Ireland; it would not oblige the UK Government to apply them in the rest of the UK:

[I]t is right that where steps can be taken to avoid divergence, they should be taken. And as the Protocol sets out, the relevant legal regimes in GB and NI will be one of the factors taken into account in bringing into operation relevant checks and controls in a backstop scenario. As such, and reflecting commitments that the Prime Minister has already given, we would ensure that there would be no divergence in the rules applied in Great Britain and Northern Ireland in areas covered by the Protocol. By so doing we would ensure everything possible had been done to avoid any additional preventable barriers within the UK internal market.⁵⁸

Statement by President of the European Council, 20 March 2019

On 20 March 2019, Donald Tusk, President of the European Council, made a statement in response to the receipt of the Prime Minister’s letter. President Tusk stated that he thought it was possible for the European

⁵⁵ Department for Exiting the European Union, [UK Government Commitments to Northern Ireland and its Integral Place in the United Kingdom](#), 9 January 2019, p 7.

⁵⁶ *ibid.*

⁵⁷ *ibid.*, p 11.

⁵⁸ *ibid.*

Council to approve the Strasbourg documents agreed between Mrs May and President Juncker:

When it comes to the approval of the Strasbourg agreement, I believe that this is possible, and in my view it does not create risks. Especially if it were to help the ratification process in the United Kingdom.⁵⁹

President Tusk's statement is covered further in section 4.4 of this briefing.

4. Extending Article 50

Following the Commons vote on 14 March 2019 agreeing that the Government should seek an extension of the article 50 period, Theresa May wrote to Donald Tusk, President of the European Council, on 20 March 2019 to request an extension to 30 June 2019.⁶⁰ This request will be considered by the leaders of the EU27 member states at the European Council summit on 21 March 2019. This section of the briefing sets out the background to this request, looking at the relevant legal processes in EU and domestic law, including the impact of the European Parliament elections in May on the duration of a possible extension.

4.1 Legal Process

Extending article 50 needs to take account of requirements and obligations in both EU law and domestic law. For as long as the UK remains a member of the EU, it is bound by its obligations as a member state under the EU Treaties (the Treaty on European Union and the Treaty on the Functioning of the European Union) and under EU law, and domestic law provisions are necessary to enable the UK to implement those obligations. Once the UK is no longer a member state, changes are needed to these domestic law provisions to ensure that the statute book still functions, reflecting the UK's new status as a non-EU member state. Processes under both the UK and EU systems would need to be coordinated to accommodate an extension of the article 50 period.

EU Law

In a document published on 14 March 2019—ahead of the Commons vote on whether to request an extension of article 50—the Government set out the steps that would be necessary for it to take under EU law to request

⁵⁹ European Council, '[Statement by President Donald Tusk on Brexit](#)', 20 March 2019.

⁶⁰ Prime Minister, '[Letter to Donald Tusk, President of the European Council](#)', 20 March 2019.

an extension:

What are the legal requirements for an article 50 extension set out in the EU Treaties?

The article 50 period is set at two years unless, as provided for in article 50, “*the European Council in agreement with the Member State concerned, unanimously decides to extend [it]*”. Article 50 does not establish any upper limit on the length of an extension. However, given the article 50 period is explicitly time-limited, any extension would have to set a specific end date, because it is necessary for reasons of legal certainty to be clear on the date on which the UK will leave the EU.

The UK’s status during any extended period would remain that of a full member state, subject to all rights and obligations set out in the EU Treaties and under EU law. This also means that the UK could not use an amended period to commence negotiations on the legal agreements necessary to give effect to the future relationship—the EU can only negotiate these with the UK after it has left.

Has the EU placed any conditions on the UK’s request?

A statement issued on behalf of the President of the European Council on 12 March recorded that “*the EU27 will expect a credible justification for a possible extension and its duration*”. Other EU leaders, including Mark Rutte and Emmanuel Macron, as well as Michel Barnier and numerous Members of the European Parliament (MEPs), have also set out this requirement.

What is the process for the UK requesting an extension?

While article 50 does not set out how either party should request an extension, the Government believes it would be appropriate for the Prime Minister to write to the President of the European Council, setting out why the UK was requesting an extension and for how long.

What is the process for the EU agreeing a UK request?

The European Council has to approve an extension by unanimity, meaning it requires the agreement of the Heads of State or Government of the other 27 EU Member States.

While article 50 does not set out how this decision should be taken, and in theory the European Council could act by written procedure, to

date it has taken all decisions under article 50 in scheduled meetings. The Government therefore understands that the UK will need to request any extension in advance of the March European Council, which takes place on 21 and 22 March and is the last scheduled meeting before the end of the current article 50 period, in order that the European Council at 27 can discuss and decide whether to agree to any UK request.⁶¹

Discussion of Brexit is down on the European Council agenda for the first day of the scheduled summit, 21 March 2019.⁶²

Journalists have obtained a leaked copy of a draft European Council Decision that illustrates how an extension to article 50, once agreed unanimously by the EU27 and the UK, could be turned into a legally binding instrument.⁶³ Under EU law, a Decision is “a binding legal act which may either be of general application or may have a specific addressee”.⁶⁴ European Council Decisions may be referred to as “non-legislative acts” because they are not adopted using one of the EU’s legislative procedures, but they are legally binding.⁶⁵

If the article 50 period were extended, the Government’s position is that the extension could be brought to an end early by the entry into force of a withdrawal agreement between the UK and the EU. David Lidington, Minister for the Cabinet Office, explained during the Commons debate on whether to request an extension that:

[...] article 50 of the [Treaty on European Union] does say, in terms, that the treaties “cease to apply” to the departing member state

“from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification”

of triggering article 50. In other words, it is the sooner of the conclusion and entering into force of the withdrawal agreement, and the two-year deadline. Logically it therefore follows that, were an extension of any length to be negotiated and agreed, it would always be possible for the House and the other place to bring about an earlier

⁶¹ HM Government, [EU Exit: Parameters of Extending Article 50](#), 14 March 2019.

⁶² European Council, [‘European Council \(Art 50\), 21/03/19’](#); and [‘Meeting Calendar’](#), accessed 20 March 2019.

⁶³ Alex Barker (*Financial Times* Brussels Bureau Chief), [‘Personal Twitter Account’](#), 15 March 2019.

⁶⁴ EUR-Lex, [‘European Union Decisions’](#), accessed 20 March 2019.

⁶⁵ *ibid.* Further information about EU Decisions is available in the House of Commons Library briefing, [Legislating for Brexit: EU Decisions](#) (19 January 2018).

conclusion to that extension than the specified deadline by agreeing to a withdrawal agreement at that earlier date.⁶⁶

Domestic Law

In domestic law, the date of exit day is set as 11.00pm on 29 March 2019 by section 20(1) of the European Union (Withdrawal) Act 2018 (the EUWA), the same date and time at which the UK's membership of the EU is currently due to end by default under article 50 if no extension is agreed. It is the operation of article 50 and EU law which govern when the UK's membership of the EU will cease. 'Exit day' as specified in the EUWA can only have an effect in domestic law.

The concept of 'exit day' works in domestic law to enact changes to the statute book necessary as a result of the UK leaving the EU. Section 1 of the EUWA provides that the European Communities Act 1972—the 'conduit pipe' through which EU law flows into domestic law—is repealed on exit day.⁶⁷ By converting existing EU law into domestic law and preserving domestic law that was originally made in order to implement EU obligations in UK law, the EUWA establishes a new legal category in domestic law called 'retained EU law'. The EUWA provides that this body of retained EU law will continue to apply after exit day, in order to avoid gaps in the statute book. Section 8 of the EUWA gives ministers and the devolved administrations powers to make regulations to deal with 'deficiencies' in domestic law arising from the UK's withdrawal from the EU (eg correcting references to the UK as a member state or reassigning to UK bodies functions currently carried out at EU level). Many of the regulations that have now been made under this power are drafted so that they will come into force on exit day. By making these changes in the domestic legal order at the moment the UK's membership of the EU ends, it ensures the UK can fulfil its obligations under the EU Treaties until the point of its departure and that there will be domestic legal certainty thereafter.

The EUWA contains provision for the definition of exit day to be changed by secondary legislation. Sections 20(3) and 20(4) state:

(3) Subsection (4) applies if the day or time on or at which the Treaties are to cease to apply to the United Kingdom in accordance with article 50(3) of the Treaty on European Union is different from that specified in the definition of "exit day" in subsection (1).

⁶⁶ [HC Hansard, 14 March 2019, col 565.](#)

⁶⁷ This provision of the EUWA has not yet been brought into force. For more information about how EU law flows into domestic law through the European Communities Act 1972, see the [Explanatory Notes to the European Union \(Withdrawal\) Act 2018.](#)

- (4) A Minister of the Crown may by regulations—
- (a) amend the definition of “exit day” in subsection (1) to ensure that the day and time specified in the definition are the day and time that the Treaties are to cease to apply to the United Kingdom, and
 - (b) amend subsection (2) in consequence of any such amendment.

The power to change the date of exit day by regulations is drafted so that it can be used only to ensure that the definition used in the EUWA matches the date on which the EU Treaties will cease to apply to the UK. It follows that the Government would have to reach agreement with the EU on any changes to the UK’s departure date before it could make regulations under this power to change the definition of exit day.

Paragraph 14 of schedule 7 of the EUWA provides that such regulations “may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament”. This is known as the draft affirmative procedure.

Neither House has the power to amend delegated legislation, except in the very small number of cases where the parent Act specifically provides for such an amendment.⁶⁸ There is no such provision in the EUWA. If the Government lays regulations to change the date of exit day, they would therefore have to be approved by both Houses before they could come into force; neither House could amend the regulations, and both Houses would have the ability to reject them.

Although both Houses have the power to veto delegated legislation, it is rare for them to use it. The House of Lords has rejected delegated legislation five times since 1968.⁶⁹ In addition, on 26 October 2015, the Government was defeated in the House of Lords after Members voted to support two amendments to an approval motion, both of which sought to delay consideration of the Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015 until specific conditions had been met.⁷⁰ The House of Commons has not rejected an affirmative statutory instrument since 1978.⁷¹

The House of Lords *Companion to the Standing Orders* notes that: “Opposition to or concern about an affirmative instrument may be

⁶⁸ House of Lords, [Companion to the Standing orders and Guide to the Proceedings of the House of Lords](#), 2017, para 10.02.

⁶⁹ *ibid*, footnote 2.

⁷⁰ House of Lords Library, [Delegated Legislation in the House of Lords Since 1997](#), 5 January 2016, p 1.

⁷¹ House of Commons Library, [Statutory Instruments](#), 15 December 2016, p 24.

expressed in a number of ways (in addition to speaking in the debate in Grand Committee or on the approval motion [in the Chamber]’.⁷² It gives the following examples:

- Members may give notice of direct opposition by means of an amendment to the approval motion, the effect of which would be to withhold the agreement of the House;
- Members may, by means of an amendment or separate motion, call upon the Government to take specified action (but which will not, even if agreed, prevent the approval of the instrument);
- Members may, by means of an amendment or a separate motion, invite the House to put on record a particular point of view relating to the instrument, but without calling on the Government to take any specific action.⁷³

Different procedural rules apply in each House for the consideration of delegated legislation. In the House of Commons affirmative instruments are usually debated in a delegated legislation committee, with the formal decision on whether to approve taken later without debate in the Chamber.⁷⁴ Less commonly, an affirmative instrument can be debated in the Commons Chamber.⁷⁵ Wherever the debate takes place, as a proceeding under an Act, the debate is limited to 90 minutes unless the Commons agrees to set aside Standing Order 16(1).⁷⁶

In the House of Lords, delegated legislation may be debated in Grand Committee, but must return to the floor of the House if a formal decision is required.⁷⁷ There is no time limit specified for debate on delegated legislation in the Lords. Under House of Lords Standing Order 72, motions to approve most types of statutory instrument may not be moved until a report on the instrument from the Joint Committee on Statutory Instruments (JCSI) has been laid before the House.⁷⁸ However, the House has agreed from time to time to dispense with this standing order.⁷⁹

⁷² House of Lords, [Companion to the Standing orders and Guide to the Proceedings of the House of Lords](#), 2017, para 10.14.

⁷³ *ibid.*

⁷⁴ UK Parliament, ‘[MPs Guide to Procedure: Delegated Legislation and Statutory Instruments](#)’; and ‘[MPs Guide to Procedure: What Happens After a Delegated Legislation Committee](#)’, accessed 20 March 2019.

⁷⁵ UK Parliament, ‘[MPs Guide to Procedure: Delegated Legislation and Statutory Instruments](#)’, 20 March 2019.

⁷⁶ Brigid Fowler, ‘[Changing EU ‘Exit Day’ by Statutory Instrument](#)’, Hansard Society Blog, 18 March 2019.

⁷⁷ House of Lords, [Companion to the Standing orders and Guide to the Proceedings of the House of Lords](#), 2017, para 10.02.

⁷⁸ House of Lords, [The Standing Orders of the House of Lords Relating to Public Business](#), 2016.

⁷⁹ House of Lords, [Companion to the Standing orders and Guide to the Proceedings of the House of Lords](#), 2017, para 10.12, footnote 5.

With regard to timings, Dr Brigid Fowler of the Hansard Society has observed:

The JCSI asks the Government to lay an affirmative SI before Parliament by the Monday of the week preceding the week in which the Committee will consider it at its weekly Wednesday meeting. In other words, under the JCSI's normal requested scrutiny timelines, the 'exit day' SI would have to be laid today (18 March) for the Committee to be able to consider it at its meeting on Wednesday 27 March.

However, the JCSI can consider SIs under an expedited procedure.

No such 'scrutiny reserve' exists applies in the House of Commons, which in procedural terms could thus debate the 'exit day' SI before the JCSI has reported on it.

In the House of Lords, the Secondary Legislation Scrutiny Committee (SLSC) also normally considers SIs, but this committee could also move speedily if it wished to report on the 'exit day' SI, and SLSC consideration is anyway not a requirement before the Lords' decision.

[...] Normally, from laying to making the SI, the draft affirmative procedure takes around six weeks.

However, given the steps outlined above, the process could be accelerated. We see no insuperable procedural obstacle to proceedings on the 'exit day' SI being completed by 29 March if the draft SI were laid, for example on Friday 22 or Monday 25 March.⁸⁰

In its written statement of 15 March 2019 (made under section 13(4) of the EUWA following the Government's defeat in the second 'meaningful vote'), the Government said it would bring forward the necessary legislation to amend the definition of exit day in domestic legislation "[a]s soon as possible following agreement at the EU level".⁸¹

4.2 European Parliament Elections: Impact on Length of Extension

Elections to the European Parliament are scheduled to take place in EU member states between 23 and 26 May 2019. This has a number of implications for the possibility of extending the article 50 period, which have

⁸⁰ Brigid Fowler, '[Changing EU 'Exit Day' by Statutory Instrument](#)', Hansard Society Blog, 18 March 2019.

⁸¹ House of Commons, '[Written Statement: Statement under Section 13\(4\) of the European Union \(Withdrawal\) Act 2018](#)', 15 March 2019, HCWSI421.

been summarised as follows by the House of Commons Library:

The final sitting of the outgoing EP [European Parliament] is scheduled for 18 April 2019 and the new Parliament will sit for the first time on 2 July. This creates a further complication given that the EP's consent is required for the WA [withdrawal agreement]. It would be possible for the EP to have its consent vote on the WA prior to UK approval, but the intention within the EP is to wait until the House of Commons approves the WA before holding its own vote. Alternatively, if the WA has not been approved by the EP by 18 April 2019, a recall of the outgoing Parliament is possible up until the newly elected EP sits for the first time on 2 July. EU law provides that the outgoing EP remains in office until the new one sits for the first time, and the EP's rules of procedure provide that the President of the Parliament can recall the EP following a request by the majority of its Members or from the Commission or the Council.

While the WA has to be approved by the EP, the PD [political declaration/framework for the future relationship] does not. If an extension of article 50 therefore resulted in a change to the PD but not the WA (and the WA had already been ratified by the EP) then the EP would not need to be recalled to give its approval.

UK participation in the EP elections if article 50 extended beyond 1 July

A leaked EU document on 15 March indicated that an extension of the article 50 period until 1 July would be possible without the UK participating in EP elections. No extension beyond this point would however be possible if the UK had not held EP elections. The President of the European Commission and senior MEPs previously indicated that UK participation in the elections would be required if the UK was still a Member State on 23–26 May even it planned to leave the EU shortly after.

The EU has already adopted legislation reallocating some of the UK's seats in the European Parliament to 14 other Member States, although this only comes into effect if the UK has left the EU by the time the new Parliamentary term starts. Nevertheless, some countries may be reluctant to countenance an article 50 extension that disrupts election planning based on an increased allocation of MEPs.

According to advice from the EP's legal service "there is no rule hindering" the EP being constituted without all seats having been allocated at the time of the first sitting. However, the leaked EU document on 15 March warned that EU institutions would "cease

being able to operate in a secure legal context” if the UK remained in the EU after 1 July without having held EP elections and that this could leave EU acts open to legal challenge. A failure to hold elections in the UK would in any case mean that the UK would be in breach of EU Treaty articles which provide that EU citizens have the right to be represented in the EP and to vote and stand in EP elections. This could lead to a legal case against the UK at the Court of Justice of the EU (CJEU).

There have been reports that some EU leaders would be prepared to agree a protocol with the UK absolving it from having to hold EP elections if article 50 was extended into July. There have also been suggestions that the UK could hold a ‘catch-up’ election at a later date if it decided to remain in the EU (for example if article 50 was extended in order for another referendum to be held). The UK Advocate General at the CJEU has suggested that the issue could be addressed by extending the mandate of existing UK MEPs or allowing the UK to send national parliamentarians to sit as MEPs for a while. However, the leaked EU document on 15 March said that a Treaty change would be required to allow the UK to extend article 50 without holding EP elections. This would need to be ratified in all Member States and would therefore not be feasible in a short timeframe.

One other complication is that following the EP elections the process will also begin to appoint the new President of the European Commission and other Commissioners, with the new Commission not taking office until the beginning of November. This could delay matters further if article 50 negotiations go beyond 1 July.⁸²

Taking these factors into account, the Government has taken the position that “if the UK were to seek an extension beyond 1 July, and hence remain a member state beyond that point, it would need to participate in the EP elections”.⁸³ The Prime Minister stated after the Commons vote on 13 March 2019 to reject leaving with no deal that she did not think “a longer extension” requiring the UK to hold European Parliament elections “would be the right outcome”.⁸⁴

The European Commission reiterated its view this week that if the UK were still to be an EU member state at the time of the elections, it would need to participate, even if it were scheduled to leave before the new European Parliament is due to sit on 2 July. A Commission spokesperson said that President Juncker had made this point to Theresa May in a phone call on

⁸² House of Commons Library, [Extending Article 50: Could Brexit be Delayed?](#), 19 March 2019.

⁸³ HM Government, [EU Exit: Parameters of Extending Article 50](#), 14 March 2019.

⁸⁴ [HC Hansard, 13 March 2019, col 464.](#)

20 March 2019:

[...] the President has clearly warned the Prime Minister against including a date for the extension that will be after the European Parliament elections. That's why he repeated in this call his advice, which he set out in his letter on March 11, that the withdrawal has to be complete before May 23, otherwise we risk facing institutional difficulties and legal uncertainty, given the European elections date.

European elections have to be held if the extension date is beyond May 23. This is the position of the Commission and this is what the President informed the Prime Minister again.⁸⁵

If the UK were to participate in the European elections, then returning officers would be required to publish notice of the poll by 12 April 2019.⁸⁶ Before this could happen, the Government would have to formally appoint the date of the poll by Order made under the European Parliamentary Elections Act 2002. The UK legislation which enables European Parliament elections to be held is due to be repealed, but is still on the statute book for the time being, as the Government explained in a recent written answer:

The European Union (Withdrawal) Act 2018 (“the 2018 Act”) repeals the underlying pieces of legislation providing for the holding of European Parliamentary elections. The repeal of these provisions will come into effect on such a day as is set out in commencement Regulations. The European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) Regulations 2018 were made on 3rd December 2018 under powers in the 2018 Act. These Regulations make further provision as a result of the UK no longer participating in European Parliamentary elections, and will come into force on the day that the UK leaves the European Union.⁸⁷

4.3 UK Request to Extend to 30 June 2019

On 20 March 2019, Theresa May wrote to Donald Tusk, President of the European Council, to make a request to extend the article 50 period to 30 June 2019.⁸⁸ She stated that it remained the Government's policy to leave the EU “in an orderly manner” on the basis of the deal negotiated with the EU, and that it remained her intention to bring the deal back to the

⁸⁵ Daniel Boffey, '[Juncker Tells May UK Must Leave EU by 23 May If It Is Not Taking Part in European Elections](#)', *Guardian*, 20 March 2019.

⁸⁶ HM Government, '[EU Exit: Parameters of Extending Article 50](#)', 14 March 2019.

⁸⁷ House of Lords, '[Written Question: European Parliament Elections](#)', 19 March 2019, HL14522.

⁸⁸ Prime Minister, '[Letter to Donald Tusk, President of the European Council](#)', 20 March 2019.

Commons for another vote. She said that “in light of the outcome of the European Council”, she intended to “put forward a motion as soon as possible under section 13 of the Withdrawal Act 2018”, in other words a third ‘meaningful vote’. If this motion was passed, she was “confident that Parliament will proceed to ratify the deal constructively”, but “this will clearly not be completed before 29 March 2019”. She explained that the Government would need to take a bill through both Houses of Parliament to enact the UK’s commitments in the withdrawal agreement into domestic law, and “the timetable for this is inevitably uncertain at this stage”.⁸⁹ She said she was therefore writing to inform the European Council that the UK was seeking an extension to the article 50 period until 30 June 2019.

At Prime Minister’s questions on the same day, Mrs May stated that if a third ‘meaningful vote’ was passed, “the extension will give the House time to consider the Withdrawal Agreement Bill”.⁹⁰ If the Government lost the third ‘meaningful vote’, then she said “the House will have to decide how to proceed”. She stated that: “As Prime Minister, I am not prepared to delay Brexit any further than 30 June”.

Later the same day, in a statement made in Downing Street, the Prime Minister said the fact the UK would not now leave on time with a deal on 29 March was “a matter of great personal regret”.⁹¹ She said a delay until 30 June would “give MPs time to make a final choice” and criticised Parliament for having “done everything possible to avoid making a choice” so far, with MPs only “willing to say what it is they do not want”. Reiterating that she was not prepared to delay Brexit any further than 30 June, she also said she was not prepared to ask for a longer extension that would mean asking the public to take part in European Parliament elections three years after voting to leave the EU, nor was she prepared to hold a second referendum when the public had already given its answer.

4.4 Response from European Council President

Having received Mrs May’s letter and discussed it with her in a phone call, Donald Tusk made a statement to the press on 20 March 2019, ahead of the European Council summit due to take place the next day. He suggested that the EU27 leaders would agree to an extension only if the Government had won a ‘meaningful vote’ in the Commons, and would not necessarily accept the Government’s proposed date of 30 June:

In the light of the consultations I have conducted over the past day, I believe that a short extension will be possible, but it will be conditional

⁸⁹ Section 13(1)(d) of the European Union (Withdrawal) Act 2018 stipulates that before a withdrawal agreement can be ratified, an Act of Parliament must be passed which contains provision for the implementation of the withdrawal agreement.

⁹⁰ [HC Hansard, 20 March 2019, col 1035](#).

⁹¹ Prime Minister’s Office, [‘PM Statement on Brexit: 20 March 2019’](#), 20 March 2019.

on a positive vote on the withdrawal agreement in the House of Commons. The question remains open as to the duration of such an extension. Prime Minister May's proposal, of 30 June, which has its merits, creates a series of questions of a legal and political nature. Leaders will discuss this tomorrow.⁹²

Earlier in the day, Jean-Claude Juncker, President of the European Commission, had suggested that if EU leaders were unable to come to an agreement on the UK's extension request at their scheduled summit, they might have to hold another meeting next week to make a decision:

My assessment [...] is that the European Council this week won't come to a decision and we'll probably have to meet again next week because Mrs May doesn't have approval for anything—not in her Cabinet and not in Parliament. As long as we don't know what Britain could say yes to, we can't come to any decision.⁹³

However, President Tusk indicated he did not think this would be necessary, although he did not rule it out completely:

At this time I do not foresee an extraordinary [ie additional] European Council. If the leaders approve my recommendations, and if there is a positive vote in the House of Commons next week, we can finalise and formalise the decision on the extension in a written procedure. However, if there is such a need, I will not hesitate to invite the members of the European Council for a meeting to Brussels next week.⁹⁴

He emphasised that although the EU still wanted to reach agreement with the UK, it would not renegotiate the withdrawal agreement:

Even if the hope for a final success may seem frail, even illusory, and although Brexit fatigue is increasingly visible and justified, we cannot give up seeking—until the very last moment—a positive solution, of course without opening up the withdrawal agreement.⁹⁵

President Tusk did not address explicitly in his statement what the European Council would do if the Government failed to win a 'meaningful vote' in the Commons. The default legal position remains that unless a withdrawal agreement is ratified by 29 March 2019, or an extension to article 50 is agreed, or the UK revokes its article 50 notification, then the UK will leave the EU without a deal on 29 March 2019.

⁹² European Council, '[Statement by President Donald Tusk on Brexit](#)', 20 March 2019.

⁹³ Charlie Cooper, Andrew Gray and Florian Eder, '[No 10 Says Theresa May Won't Seek Long Brexit Delay as EU Flags Extra Summit](#)', Politico (£), 20 March 2019.

⁹⁴ European Council, '[Statement by President Donald Tusk on Brexit](#)', 20 March 2019.

⁹⁵ *ibid.*

Appendix: Sequence of Debates, December 2018–March 2019

| House | Dates | Basis | Summary |
|---------|-----------------------------------|------------|---|
| Commons | 4, 5, 6 and 10 December 2018 | section 13 | The House of Commons held a debate for the purposes of section 13(1)(b) of the European Union (Withdrawal) Act 2018 (EUWA), which requires the House of Commons to approve the withdrawal agreement and political declaration as one of the steps necessary before ratification of the withdrawal agreement can proceed. A vote, the so-called ‘meaningful vote’, was expected to take place on 11 December 2018, but on 10 December, the Prime Minister announced that she was going to defer the vote in order to seek further assurances from the EU about the Northern Ireland backstop arrangements in the deal. ⁹⁶ |
| Lords | 5, 6 and 10 December 2018 | section 13 | The House of Lords held a debate for the purposes of section 13(1)(c) of the EUWA. This requires the Government to table a take-note motion in the Lords on the withdrawal agreement and political declaration as one of the steps required before ratification of the withdrawal agreement can proceed. This debate was adjourned when the Prime Minister decided to delay the ‘meaningful vote’ in the Commons. ⁹⁷ |
| Commons | 9, 10, 11, 14 and 15 January 2019 | section 13 | The House of Commons concluded its debate on the withdrawal agreement and political declaration for the purposes of section 13(1)(b) of the EUWA. The ‘meaningful vote’ took place on 15 January 2019, and the Commons voted by a majority of 230 not to approve the withdrawal agreement and political declaration. ⁹⁸ |
| Lords | 9, 10 and 14 January 2019 | section 13 | The House of Lords concluded its debate on the withdrawal agreement and political declaration for the purposes of section 13(1)(c) of the EUWA, and agreed without division to the Government’s take-note motion. ⁹⁹ The House voted by 321 to 152—a majority of 169—in favour of a separate motion tabled by Baroness Smith of Basildon, Shadow Leader of the House of Lords. Whilst noting that it was for the Commons to determine the matter, Baroness Smith’s motion rejected a no-deal outcome and regretted that the terms of the withdrawal |

⁹⁶ [HC Hansard, 10 December 2018, col 23.](#)

⁹⁷ For more details, see: House of Lords Library, [Adjournment of the House of Lords Debate on the Withdrawal Agreement and Political Declaration](#), 11 December 2018.

⁹⁸ [HC Hansard, 15 January 2019, cols 1122–5.](#) The outcome of the ‘meaningful vote’ and the events leading up to the Lords debate on 28 January 2019 and the Commons debate on 29 January 2019 are covered in more detail in the Lords Library Briefing on [Further Debate for the Purposes of Section 13 of the European Union \(Withdrawal\) Act 2018](#) (24 January 2019).

⁹⁹ [HL Hansard, 14 January 2019, col 118.](#)

| | House | Dates | Basis | Summary |
|--|---------|------------------|-----------------------|--|
| | | | | agreement and political declaration would “damage the future economic prosperity, internal security and global influence of the UK”. ¹⁰⁰ |
| | Lords | 28 January 2019 | section 13 | The House of Lords held a further debate in line with the requirements of section 13 of the EUWA about what must happen in the event the Government loses a ‘meaningful vote’ on the withdrawal agreement and political declaration. The House agreed without division to the Government’s take-note motion, and voted in favour of a separate motion moved by Baroness Smith of Basildon, Shadow Leader of the House of Lords, calling on the Government to take all appropriate steps to ensure the UK does not leave without a deal, and to provide sufficient time in the Lords to pass legislation to implement any deal that has majority support in the Commons. ¹⁰¹ |
| | Commons | 29 January 2019 | section 13 | The House of Commons held a further debate in line with the requirements of section 13 of the EUWA about what must happen in the event the Government loses the ‘meaningful vote’. The Commons voted by a majority of 16 in favour of a backbench amendment supported by the Government to replace the Northern Ireland backstop with “alternative arrangements to avoid a hard border” (the Brady amendment). ¹⁰² The Commons also voted by a majority of eight in favour of an amendment rejecting the UK leaving the EU with no deal (the Spelman amendment). ¹⁰³ |
| | Lords | 13 February 2019 | Government commitment | The House of Lords held a take-note debate on the ongoing discussions with the EU under article 50. This debate was not a statutory requirement under the EUWA. When the Prime Minister made the commitment to a debate in the Commons on 14 February if she had not by then brought back a revised deal for a second ‘meaningful vote’, she did not say anything explicitly about holding a debate in the Lords around the same time. However, Baroness Evans of Bowes Park, Leader of the House of Lords, had already indicated that the Lords would be given the opportunity to consider the outcome of the votes held in the Commons on 29 January 2019. The Lords agreed without division to the Government’s take-note motion. The House voted by a majority of 86 in favour of a separate motion moved by Baroness Smith |

¹⁰⁰ [HL Hansard, 14 January 2019, cols 119–22.](#)

¹⁰¹ [HL Hansard, 28 January 2019, cols 982–6.](#)

¹⁰² [HC Hansard, 29 January 2019, cols 784–7.](#)

¹⁰³ [ibid, cols 779–83.](#)

| House | Dates | Basis | Summary |
|---------|------------------|---------------|--|
| | | | of Basildon, Shadow Leader of the House, calling on the Government to take all steps necessary to ensure that the UK did not leave the EU on 29 March 2019 without an agreement ratified by both Houses and to ensure that a second ‘meaningful vote’ and corresponding take-note debate in the Lords took place before the end of February 2019. ¹⁰⁴ |
| Commons | 14 February 2019 | PM commitment | The House of Commons held a debate following a statement made by the Prime Minister on 12 February 2019 on progress made with the EU in seeking legally binding changes to the withdrawal agreement. This debate was not a statutory requirement under the EUWA, but after the previous Commons debate, the Prime Minister had set herself a deadline of 13 February 2019 for either bringing back a revised deal for a second ‘meaningful vote’ in the Commons, or making a statement and holding a debate by 14 February 2019. The Commons voted by a majority of 45 against the Government’s motion. ¹⁰⁵ |
| Commons | 27 February 2019 | PM commitment | <p>The House of Commons held a debate following a statement made by the Prime Minister on 26 February 2019 on progress made with the EU in reaching agreement on a deal that could command a majority in the House of Commons. This debate was not a statutory requirement under the EUWA, but after the previous Commons debate, the Prime Minister had set herself a deadline of 27 February 2019 for either bringing back a revised deal for a second ‘meaningful vote’ in the Commons or making a statement and holding a debate by 27 February 2019. In her statement on 26 February 2019, the Prime Minister committed to holding a second ‘meaningful vote’ in the House of Commons by 12 March at the latest. If the Government did not win a ‘meaningful vote’ by then, it would table a motion for debate on 13 March 2019, allowing the Commons to vote on whether it wished the UK to leave the EU without a deal. Should the Commons vote against no deal it would be given the opportunity on 14 March 2019 to vote on requiring the Government to request a short, limited, extension to article 50.</p> <p>The Commons agreed to an amendment by Yvette Cooper (Labour MP for Normanton, Pontefract and Castleford), to amend the Government’s motion for the 27 February 2019 debate to including wording</p> |

¹⁰⁴ [HL Hansard, 13 February 2019, cols 1937–8.](#)

¹⁰⁵ [HC Hansard, 14 February 2019, cols 1155–8.](#)

| | House | Dates | Basis | Summary |
|--|---------|------------------|-----------------------|--|
| | | | | incorporating these commitments made by the Prime Minister. This was passed by 502 votes to 20. ¹⁰⁶ The House of Commons also accepted, without division, an amendment by Alberto Costa (Conservative MP for South Leicestershire), to require the Prime Minister to seek a joint UK-EU commitment on adopting part two of the withdrawal agreement on citizens' rights, regardless of whether the UK left the EU without an agreement. ¹⁰⁷ |
| | Lords | 27 February 2019 | Government commitment | The House of Lords held a take-note debate on the ongoing discussions with the EU under article 50. This debate was not a statutory requirement under the EUWA. The Lords agreed without division to the Government's take-note motion. ¹⁰⁸ |
| | Lords | 11 March 2019 | Government commitment | The House of Lords held a take-note debate on further developments in discussions with the EU under article 50. This debate was not a statutory requirement under the EUWA. The Lords agreed without division to the Government's take-note motion. ¹⁰⁹ |
| | Commons | 12 March 2019 | section 13 | <p>On 26 February 2019, the Prime Minister committed to holding a second 'meaningful vote' in the House of Commons by 12 March 2019 at the latest.¹¹⁰ The House of Commons held a debate under section 13(1)(b) of the EUWA on whether to approve the withdrawal agreement and political declaration agreed with the EU in November 2018, the joint instrument on the withdrawal agreement and the joint statement on the political declaration agreed with the EU on 11 March 2019, and the UK's unilateral declaration on the Ireland/Northern Ireland Protocol made on 11 March 2019.¹¹¹</p> <p>The Attorney General published his legal opinion on the joint instrument and the unilateral declaration on the morning of 12 March 2019.¹¹² He concluded that they "reduce the risk that the United Kingdom could be indefinitely and involuntarily detained within the Protocol's provisions at least in so far as that situation</p> |

¹⁰⁶ [HC Hansard, 27 February 2019, cols 454–7.](#)

¹⁰⁷ [ibid](#), col 453.

¹⁰⁸ [HL Hansard, 27 February 2019, col 292.](#)

¹⁰⁹ [HL Hansard, 11 March 2019, col 906.](#)

¹¹⁰ [HC Hansard, 26 February 2019, col 166.](#)

¹¹¹ Copies of all these documents are available on the Department for Exiting the European Union webpage: '[11 March Withdrawal Agreement and Political Declaration Laid Before Parliament Following Political Agreement](#)', 11 March 2019. These documents, and the Attorney General's legal opinion, are examined further in the House of Commons Library briefing on [The Strasbourg Package](#) (13 March 2019).

¹¹² Department for Exiting the European Union, '[Legal Opinion on Joint Instrument and Unilateral Declaration Concerning the Withdrawal Agreement](#)', 12 March 2019.

| House | Dates | Basis | Summary |
|---------|---------------|---------------|--|
| | | | <p>had been brought about by the bad faith or want of best endeavours of the EU”. However, he also took the view that “the legal risk remains unchanged” that if no “satisfactory subsequent agreement” to replace the backstop could be reached and this was because of “intractable differences” between the EU and the UK rather than a “demonstrable failure of either party”, then the UK would have “no internationally lawful means of exiting the Protocol’s arrangements, save by agreement”.</p> <p>In what is referred to as the second ‘meaningful vote’, the Commons rejected the deal by 391 votes to 242, a majority of 149.¹¹³</p> |
| Commons | 13 March 2019 | PM commitment | <p>On 26 February 2019, the Prime Minister made a commitment that if the Government had not won a second ‘meaningful vote’ by 12 March 2019, it would table a motion for debate on 13 March 2019, allowing the Commons to vote on whether it wished the UK to leave the EU without a deal.¹¹⁴ On 13 March 2019, the Commons therefore debated a government motion “That this House declines to approve leaving the European Union without a withdrawal agreement and a framework for the future relationship on 29 March 2019; and notes that leaving without a deal remains the default option in UK and EU law unless this House and the EU ratify an agreement”.¹¹⁵</p> <p>The Commons voted by 312 to 308 (a majority of four) in favour of an amendment replacing the Government’s wording with wording that the House “rejects the United Kingdom leaving the European Union without a withdrawal agreement and a framework for the future relationship”.¹¹⁶ Dame Caroline Spelman (Conservative MP for Meriden), the lead signatory, indicated she would back the government motion and not formally move her amendment, but it was moved by Yvette Cooper (Labour MP for Normanton, Pontefract and Castleford), a co-signatory.¹¹⁷ The wording of this amendment was essentially identical to the Spelman amendment agreed by the Commons by a majority of eight on 29 January 2019.¹¹⁸ As the Spelman/Cooper amendment was agreed to, there was no vote on the government motion itself. The Commons voted on the government motion as</p> |

¹¹³ [HC Hansard, 12 March 2019, cols 291–5.](#)

¹¹⁴ [HC Hansard, 26 February 2019, col 166.](#)

¹¹⁵ [HC Hansard, 13 March 2019, col 383.](#)

¹¹⁶ *ibid*, cols 451–5.

¹¹⁷ *ibid*, col 420.

¹¹⁸ [HC Hansard, 29 January 2019, cols 779–83.](#)

| House | Dates | Basis | Summary |
|---------|---------------|---------------|---|
| | | | <p>amended by the Spelman/Cooper amendment, and approved this by 321 to 278, a majority of 43.¹¹⁹</p> <p>The Commons rejected by 374 to 164 (a majority of 210) an amendment tabled by Damian Green (Conservative MP for Ashford) for the Government to seek an extension of article 50 until 22 May 2019 and then leave the EU with a standstill transition period (essentially implementing one track of the so-called Malthouse Compromise).¹²⁰</p> |
| Commons | 14 March 2019 | PM commitment | <p>On 26 February 2019, the Prime Minister made a commitment that if the Commons voted by 13 March 2019 to reject leaving with no deal, there would be a debate on 14 March 2019 on whether to request an extension to article 50.¹²¹ On 14 March 2019, the Commons therefore debated a government motion that this House:</p> <p>(1) notes the resolutions of the House of 12 and 13 March, and accordingly agrees that the Government will seek to agree with the European Union an extension of the period specified in article 50(3);</p> <p>(2) agrees that, if the House has passed a resolution approving the negotiated withdrawal agreement and the framework for the future relationship for the purposes of section 13(1)(b) of the European Union (Withdrawal) Act 2018 by 20 March 2019, then the Government will seek to agree with the European Union a one-off extension of the period specified in article 50(3) for a period ending on 30 June 2019 for the purpose of passing the necessary EU exit legislation; and</p> <p>(3) notes that, if the House has not passed a resolution approving the negotiated withdrawal agreement and the framework for the future relationship for the purposes of section 13(1)(b) of the European Union (Withdrawal) Act 2018 by 20 March 2019, then it is highly likely that the European Council at its meeting the following day would require a clear purpose for any extension, not least to determine its length, and that any extension beyond 30 June 2019 would require the United Kingdom to hold</p> |

¹¹⁹ [HC Hansard, 13 March 2019, cols 460–63.](#)

¹²⁰ *ibid*, cols 456–9. For further information about the Malthouse Compromise, see: Conservative Home, [‘The Malthouse Compromise: An Official Explainer in Full’](#), 3 February 2019; and House of Lords Library, [Further Article 50 Discussions with the EU](#), 21 February 2019.

¹²¹ [HC Hansard, 26 February 2019, cols 166–7.](#)

| House | Dates | Basis | Summary |
|-------|-------|-------|---|
| | | | <p>European Parliament elections in May 2019.</p> <p>The Commons voted by 413 to 202 in favour of this motion, a majority of 211.¹²²</p> <p>The Commons also voted against several amendments:</p> <ul style="list-style-type: none"> • Sarah Wollaston moved an amendment to instruct the Prime Minister to seek an extension of article 50 to allow time to legislate for and conduct a public vote on whether to leave the EU on terms to be decided by Parliament or whether to remain. This was defeated by 334 to 85 (a majority of 249).¹²³ • Hilary Benn (Labour MP for Leeds Central) moved an amendment to delete the second and third parts of the government motion and to ensure parliamentary time on 20 March 2019 for a cross-party motion “to enable the House of Commons to find a way forward that can command majority support”. This was defeated by 314 votes to 312 (a majority of two).¹²⁴ • Lucy Powell (Labour MP for Manchester Central), moved an amendment that would have kept the terms as Mr Benn’s amendment, but specified that any extension to article 50 could not run beyond 30 June 2019. This was defeated by 314 votes to 311 (a majority of three).¹²⁵ • Jeremy Corbyn, Leader of the Opposition, moved an amendment noting that the Commons had “decisively rejected” the Prime Minister’s deal and leaving without a deal, and instructing the Prime Minister to seek an extension to article 50 to avoid leaving with no deal on 29 March 2019 and to provide parliamentary time for the Commons to find a majority for a different approach. This was rejected by 318 votes to 302, a majority of 16.¹²⁶ |

The House of Lords Library has written a series of briefings to accompany the Lords debates:

- [Adjournment of the House of Lords Debate on the Withdrawal Agreement and Political Declaration](#), 11 December 2018
- [Withdrawal Agreement: Section 13\(1\)\(c\) of the European Union \(Withdrawal\) Act 2018](#), 4 January 2019

¹²² [HC Hansard, 14 March 2019, cols 647–51.](#)

¹²³ [ibid, cols 629–31.](#)

¹²⁴ [ibid, cols 638–41.](#)

¹²⁵ [ibid, cols 633–7.](#)

¹²⁶ [ibid, cols 642–6.](#)

- [*Further Debate for the Purposes of Section 13 of the European Union \(Withdrawal\) Act 2018*](#), 24 January 2019
- [*Leaving the European Union: Recent Developments and Debates under Section 13 of the European Union \(Withdrawal\) Act 2018*](#), 31 January 2019
- [*Further Take-Note Debate on EU Withdrawal*](#), 8 February 2019
- [*Further Article 50 Discussions with the EU*](#), 21 February 2019
- [*Brexit: Recent Developments*](#), 7 March 2019